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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/064,769 | 08/15/2002 | Samuel Edward Ebenstein | 201-1317 | 2563 |

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EXAMINER

KOSTAK, VICTOR R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2614

DATE MAILED: 08/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/064,769

Applicant(s)

EBENSTEIN ET AL.

Examiner

Victor R. Kostak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 9-19 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Applicant's arguments filed on 06/14/05 with regard to amended claims 1-6 have been fully considered but they are not persuasive. Orlando, applied in the last Office action, accordingly still applies explained as follows, with applicant's arguments addressed in the context of the rejection.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are now rejected under 35 U.S.C. 103(a) as being unpatentable over Orlando et al. (of record).

Reviewing the camera testing system of Orlando (col. 1 lines 6-9, noting Fig. 1) he includes a camera 20 that is positioned to image a target 21 and light from a first light source 28. The image signal output from element 18 is displayed (monitor not shown: e.g. col. 4 lines 64-67; col. 5 line 9; col. 6 lines 1-3) within inherent default parameters, namely maximum and minimum brightness levels achievable by the display unit. The light source is adjusted by controller 32 (claimed dimming component) such that various lamp levels are used for image testing (e.g. col. 3 lines 65-67), meaning that the lamp can be dimmed and/or increased to plural various levels thereby assigning respective lighting condition signals for camera 20 to be tested, and respective signals are obtained therefrom per lighting condition, and are in turn displayed and analyzed (col. 3 line 67 – col. 4 line 6), as calculations for various parameters are made (e.g. col. 5 line 2+).

Orlando points out that the evaluation calculations involved in the performance testing are done automatically and does not require an observer, as argued by applicant.

However, that does not mean that an observer is disallowed to be present and/or to participate in any or all of the stages involved in the operation. An operator would be involved, first in setting up the arrangement, and at the completion of the testing. The operator can certainly be present during the entire routine (unless unauthorized, for whatever reason), although the mathematics and calculations comprising the evaluation testing would be done automatically.

It would have been obvious to one of ordinary skill in the art to make any personal observations and judgments and whatever personal analysis as so desired – for whatever they may be worth - personally or to the organizing body, at any stage of the process, which is not disallowed by Orlando. Orlando in fact points out that an observer *is indeed* involved in the evaluation and analysis process (col. 5 line 66 – col. 6 line 3). That observer can make any observations and judgments as he so pleases. The official analysis, however, would be carried out by an automatic evaluation, thereby meeting claim 1.

The dependent claims were not argued individually, the allowability relied on the state of their base claim. Because base claim 1 stands rejected, they too remain rejected as discussed in the previous Office action.

As for claim 2, the first target is positioned such that any image of the target taken by camera 20 is presented on the monitor within the maximum upper and lower brightness levels that are physically capable by the monitor.

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As noted previously, Orlando takes images of the target for plural lighting conditions (characteristic of dimmer and/or brighter light levels relative to each other), parameters of the image data thereafter analyzed according to various calculations, thereby meeting claim 3.

As for claim 4, lamp 28 includes a diffuser as labeled, the purpose of which is to lessen the concentrated emanation of direct light from lamp 28. It would have been obvious to use any suitable optical means to effect a reduction in light concentration, such as with a shield or optical or electronic filter, which would have been a ready modification recognized by the skilled artisan.

As for claim 5, it would have been obvious to use any suitable type of lamp capable of providing adequate light (of which the brightness can be controlled as desired), such as a single point light or composite array, such as a well-known spotlight or alternative source.

Regarding claim 6, although Orlando does not explicitly state that the signal analysis of the first lighting condition involves relative to discrete detectability levels, it would have been obvious to perform the signal analysis to the extent that the system make-up allows. In other words, the system limitations dictate the processing capabilities carried out to whatever the finest measurable detection and the most accurate degree of calculation can be achieved, which in real terms comes to be a discrete (rather than infinitesimal) amount.

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art listed is discussed by Orlando in his patent.

4. Claims 7 and 9-19 are allowable over the prior art.

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5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is (571) 272-7348. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this final action should be mailed to:

Box AF
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Or faxed to:

(571) 273-8300

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service Office whose telephone number is (703) 308-HELP.



Victor R. Kostak
Primary Examiner
Art Unit 2614

VRK